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7                   **UNITED STATES DISTRICT COURT**  
8                   **WESTERN DISTRICT OF WASHINGTON**  
9                   **AT SEATTLE**

10                  RE SOURCES FOR SUSTAINABLE  
11                  COMMUNITIES; A-1 BUILDERS; and all  
12                  others similarly situated,

13                  Plaintiffs,

14                  v.

15                  BUILDING INDUSTRY ASSOCIATION OF  
16                  WASHINGTON, et al.,

17                  Defendants.

18                  CASE NO. C07-1519RSM

19                  **ORDER ON MOTION FOR**  
20                  **VOLUNTARY DISMISSAL**

21                  This matter is before the Court for consideration of plaintiffs' motion for voluntary dismissal of  
22 their claim under 42 U.S.C. § 1983, as well as dismissal of defendants' counterclaims. Dkt. # 89. On  
23 June 11, 2008, the Court declined to exercise supplemental jurisdiction over plaintiffs' state law claims,  
24 and plaintiffs now seek to dismiss the remaining claims so they may concentrate their efforts and  
resources on litigation in state court. One week after plaintiffs moved for dismissal, defendants moved  
for summary judgment on the § 1983 claim, and now assert that the matter should be adjudicated on the  
merits rather than dismissed without prejudice. Defendants therefore oppose dismissal as to plaintiffs'  
§ 1983 claim, although not as to their counterclaims asserted under state law.

25                  As defendants have filed an answer in this matter, Rule 41(a)(2) requires that plaintiffs obtain an  
26 order from the Court before they may voluntarily dismiss their claim. F.R.Civ.Proc. 41(a)(2). In ruling  
27 on plaintiffs' motion to dismiss without prejudice, this Court "must determine whether the defendant[s]  
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1 will suffer some plain legal prejudice as a result of the dismissal.” *Westlands Water District v. United*  
2 *States*, 100 F. 3d 94, 96 (9th Cir. 1996) (*citing Hamilton v. Firestone Tire & Rubber Co.*, 679 F. 2d 143,  
3 145 (9th Cir. 1982)). To establish legal prejudice, the defendants must show “prejudice to some legal  
4 interest, some legal claim, some legal argument.” *Id.* Mere uncertainty over the threat of future litigation  
5 does not constitute legal prejudice. *Id.* Nor does the fact that dismissal will result in the loss of a federal  
6 forum amount to plain legal prejudice. *Id.* Further, the possibility that plaintiffs may gain a tactical  
7 advantage by re-filing their claim in another forum is insufficient to deny voluntary dismissal. *Bader v.*  
8 *Electronics for Imaging, Inc.*, 195 F.R.D. 659, 662 (N.D.Ca. 2000) (*citing American National Bank &*  
9 *Trust Co. of Sapulpa v. Bic Corp.*, 931 F. 2d 1411, 1412 (10th Cir. 1991)).

10 Defendants have asserted no basis from which the Court could find plain legal prejudice as that  
11 term has been interpreted in this circuit. While they argue that dismissal without prejudice of plaintiffs’ §  
12 1983 claim “leaves open the opportunity for further vexatious litigation and harassment,” the Court finds  
13 that even if that were the case, that possibility does not rise to the level of legal prejudice. *Westlands*  
14 *Water District*, 100 F. 3d at 96-97.

15 Accordingly, plaintiffs’ motion for voluntary dismissal is GRANTED, and their § 1983 claim is  
16 DISMISSED without prejudice. As defendants have not opposed dismissal of their counterclaims, those  
17 counterclaims are also DISMISSED without prejudice.

18 Defendants have requested that in the event plaintiffs’ motion is granted, they be awarded their  
19 costs and fees in litigating the § 1983 claim to this point. The Court finds such terms inappropriate.  
20 Imposition of costs and fees as a condition for dismissal of claims without prejudice is not mandatory. *Id.*  
21 at 97. Here, Plaintiffs moved for voluntary dismissal promptly after the Court declined supplemental  
22 jurisdiction over the state law claims. Defendants chose to move for summary judgment on the § 1983  
23 claim after plaintiffs moved for dismissal. Any work defendants put into the summary judgment motion  
24 can be used in the future should plaintiffs re-file their § 1983 claim. Under these circumstances, an award  
25 of fees and costs is inappropriate. *Id.* (“[T]he defendants should only be awarded attorney fees for work  
26 which cannot be used in any future litigation of these claims.”) Defendants’ request for terms is  
27 accordingly DENIED.

With the dismissal of the § 1983 claim and defendants' counterclaims, no claims remain to be litigated, and the action is DISMISSED in its entirety without judgment in favor of either party. The Clerk shall close the file.

4 DATED this 7<sup>th</sup> day of August 2008.



RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE